

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
ISSUED BY SNOHOMISH COUNTY TO
BIBEAUX COMPANY, INC.,

ELAINE GILLETT,

Appellant,

v.

SNOHOMISH COUNTY, BIBEAUX
COMPANY, INC., and WASHINGTON
MUTUAL SAVINGS BANK,

Respondents.

SHB No. 87-25

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the request for review of the granting of a shoreline substantial development permit for condominiums on Lake Stevens, came on for hearing before the Shorelines Hearings Board, Lawrence J. Faulk (Presiding); Wick Dufford (Chairman); Judith A. Bendor, Nancy Burnett, Robert C. Schofield and Richard Gidley, Members, on October 27 and 28, 1987, in Everett and Lacey, Washington.

Appellant was represented by its attorney, Gary T. Jones, Attorney at Law. Respondent Snohomish County was represented by Traci Goodwin,

1 Deputy Prosecuting Attorney. Respondent Washington Mutual Savings
2 Bank was joined as a party and was represented by Attorney at Law,
3 Beth A. Clark. The Bibeaux Company was represented by Marcel
4 Schuster, pro se. Court Reporters Lesley Gray and Lisa Alger recorded
5 the proceedings.

6 Witnesses were sworn and testified. Exhibits were examined.
7 Argument was heard and briefs submitted. Having heard the testimony
8 of witnesses, having examined exhibits, having considered the oral and
9 written arguments of counsel, and being fully advised, the Shorelines
10 Hearings Board makes these

11 FINDINGS OF FACT

12 I

13 This matter arises in Snohomish County on the east side of Lake
14 Stevens upon what is known as the Plat of Cedar Cove and particularly
15 Lot 1 of that plat and Tract 999. The Cedar Cove Plat was approved as
16 a planned residential development in 1980. Lot 1, was designated for
17 condominium development, with 16 townhouse units (four in each of four
18 four-plexes). Seven lots south and west of Lot 1 were platted for
19 single family residences. Tract 999, which lies between Lot 1 and the
20 lake on the north and between Lot 1 and Lake Stevens Road on the east,
21 was established as a common area for the recreational benefit of all
22 owners within the plat. It was to be maintained in a natural state.
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II

The site has a water boundary along the south shore of the cove within a shoreline of statewide significance. Natural wetlands stretch across the plat on the north between the uplands and the lake proper, curving around on the east to include a pond area. The plat includes a graveled boat launching area in the northeasterly most corner, a storm drainage outfall which passes under the East Lake Stevens Road and into Lake Stevens, a stand of mature cedar trees designated as a green belt area near East Lake Stevens Road, and the pond on the east which drains into the lake through the intervening area of natural wetlands. Lot 1 lies within the site on a margin between a wetland muck soil and an upland gravelly loam soil.

III

A shoreline substantial development permit was first issued on June 9, 1980. The 1980 SDP permitted development of the property consistent with the approved Cedar Cove Plat. Since the 1980 approvals were granted, the single-family residence lots have been sold and one of the four-plex condominium townhouse buildings has been built and units sold to purchasers, including the appellant herein. Also, sewer lines were installed, a boardwalk trail constructed across part of Tract 999 and other site improvements completed pursuant to the approved plat.

IV

Subsequent to the completion of the first four-plex, the owner/developer encountered financial difficulties and ownership of the remainder of the platted property was transferred to Washington Mutual Savings Bank. Washington Mutual has entered into a purchase and sale agreement with respondent Bibeaux Company, Inc., for the property. Bibeaux desires to construct the remaining 12 condominium units contemplated in the Cedar Cove Condominium Declaration and approved in the 1980 SDP. Because the 1980 SDP had expired, pursuant to WAC 173-14-060, Bibeaux applied for a new shoreline substantial development permit for the new construction, which permit is the subject of this appeal.

V

The property lies within an area designated Suburban under the Snohomish County Shoreline Management Master Program ("SCSMMP"). Bibeaux's application for the Permit was filed May 1, 1987.

Snohomish County, after reviewing the application, granted the permit to Bibeaux subject to compliance with the SCSMMP and the following special conditions:

1. No grading or filling shall take place in Tract 999.
2. Building permits shall be obtained prior to any further physical development.
3. Lot 1 shall be developed as shown on the approved site/landscape plan(s).

4. The flood drain and any work proposed for the pond in Tract 999 shall not begin until the proponent has demonstrated to the Planning Division that the drain is necessary and that the Dept. of Game and Snohomish County Dept. of Public Works have approved the proposal.

5. All conditions of previous Shoreline Permit and approved plat are still applicable and in force.

Condition 5 incorporates the following among other conditions from the previous permit:

IV 6. i. Prior to the initiation of any site work and prior to the recording of any portion of the final plat: A detailed drainage plan shall have been submitted to and approved by the Department of Public Works pursuant to Chapter 24.16 SCC.

ii. A rehabilitation plan for the common open space area shall have been prepared by a landscape architect and approved by the Planning Department and State Department of Game. The concept of said plan shall be to enhance the wetland environment of said area and to preserve and extend its utility as a natural or semi-natural habitat. In lieu of said plan, the platator may agree to leave said area in its natural state and shall agree not to cut or remove any of the existing vegetation.

VI

From the new Permit, as conditioned, appellant filed a request for review July 24, 1987. The request for review was certified by the Department of Ecology on August 13, 1987. On September 11, 1987, a pre-hearing conference was held.

VII

Residential development is a permitted use in the suburban environment, subject to the General Regulations noted at SCSMMP, F-53.

These General Regulations of the SCSMMP governing the residential development prohibit filling of, or into, water bodies or their associated wetlands for the purpose of subdivision construction.

VIII

Tract 999 lies at a level where periodic innundation by the lake maintains a wetland environment. Lot 1 adjoins Tract 999 and supports a portion of the same wetland. The inland portion of Lot 1 slopes upward. The wetland boundary on the north side of Lot 1 is, we find, at the toe of the slope, as indicated by the peat line on Exhibit R-41. This boundary is the line the County used in determing the wetland boundaries. The entire wetland area (north and east of Lot 1 including the pond) influences or is influenced by the lake and is, we find, therefore an associated wetland of Lake Stevens.

IX

The wetland performs an important function as a filter for water entering the lake, a water body showing signs of degradation owing to development. In addition, it provides a valuable habitat for wildlife resources. Most of such wetland areas around the lake have been wiped out. We find that the wetland is a unique and fragile resource in the "Surburban" shoreline environment where it is located.

X

The wildlife habitat which the wetland provides is valuable to many species, some of which are easily disturbed and driven away by nearby noise and activity; e.g., blue and green herons. Residential development on Lot 1, with attendant increased density of humans and domestic pets is likely to have a substantial negative effect on habitat values, unless some undeveloped space is maintained between the natural wetlands and the residential structures.

Moreover, development on the uplands poses risks of erosion and sedimentation in the wetlands through changing run-off characteristics.

XI

The plan reviewed by this Board did not call for a buffer between the proposed development and the associated wetlands to the north and the pond on the east.

We find that in order to protect unique and fragile resources of the shorelines and to prevent erosion and sedimentation that would alter the natural function of the associated wetlands, it is necessary to provide an undeveloped buffer of 25' from the associated wetlands on the north and 25' from the lot line of Lot 1 on the east. The precise lines from which these distances are measured need to be located on the ground.

The buffer area should be kept free of development, except for the planting of barrier trees and other vegetation appropriate to its function.

XII

A recent attempt to construct the proposed development has resulted in some filling of the wetlands. This area includes the part of Lot 1 shown on the approved site plan as "pregrown sod lawn."

XIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

In reviewing the validity of a substantial development permit, the Shorelines Hearings Board evaluates the consistency of the proposed project with the policies and provisions of the Shorelines Management Act (SMA) and the applicable master program. The appellant has the burden of proving that issuance of the permit was inconsistent with such policies and regulations. WAC 461-08-175(1)(a) and (c).

II

The SCSMMP provisions most pertinent to the development proposal here are set forth in the portions of the program dealing with residential developments and with shorelines of statewide significance.

In the Suburban environment residential development is permitted subject to the General Regulations. SCSMMP, p. F-55. Appellants assert that the permit as granted violates General Regulation No. 3, set forth at SCSMMP, p. F-53, as follows:

FINAL FINDINGS OF FACT,
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3. Filling of, or into, water bodies or their associated wetlands for the purpose of subdivision construction shall not be permitted.

The permit is internally inconsistent on this point. Condition 1 prohibits grading or filling on Tract 999. But, Condition 3 requires that Lot 1 be developed as shown on the approved site/landscape plan(s). Since the approved plans show a "pregrown sod lawn" on the wetland portion of Lot 1, the permit appears to allow filling on that portion of Lot 1. (Fill has, in fact, already been placed there).

We conclude that compliance with General Regulation No. 3 requires that the permit be conditioned to require the removal of any fill within the associated wetlands, and the prohibition of future grading or filling in such wetlands.

In order for the conditions relating to fill on the associated wetland to be fully understood, we further conclude that the permit should incorporate a condition which calls for the County to locate the boundary of the associated wetlands on the ground.

III

The SCSMMP spells out development guidelines to implement the criteria of RCW 90.58.020 for shorelines of statewide significance. Appellants assert that the permit as granted violates Guidelines a) and b) under the criterion "Protect the Resources and Ecology of the Shorelines," SCSMMP, p. H-2. These guidelines are, as follows:

1 a) Leave undeveloped those areas which contain
2 a unique or fragile resource.

3 b) Prevent erosion and sedimentation that would
4 alter the natural function of the water system.
5 In areas where erosion and sediment control
6 practices will not be effective, excavations or
7 other activities which increase erosion are to
8 be severely limited.

9 We conclude that the permit, insofar as it allows for the
10 installation of a lawn on the associated wetlands on Lot 1, fails to
11 conform with Guidelines a) and b). The permit should be conditioned to
12 require the restoration of natural conditions on all wetland areas
13 which have been covered with fill. This can be accomplished in
14 conjunction with the rehabilitation plan for common open space already
15 required by the permit.

14 IV

15 We further conclude that the addition of the instant development
16 next to a functioning natural wetland in the highly developed Lake
17 Stevens area presents a risk of environmental degradation to shorelines
18 of statewide significance in violation of Guidelines a) and b) unless
19 the permit is conditioned to provide an undeveloped buffer between the
20 wetland boundaries and the residential structures, as specified in
21 Finding of Fact XI above.

22 The Department of Wildlife should be consulted in regard to
23 appropriate vegetation and maintenance for the buffer area.

V

To the extent the master program is violated by the permit as issued, the permit as a matter of law is inconsistent with the policy of the SMA. Our review, however, has disclosed no additional, independent inconsistencies with chapter 90.58. RCW.

VI

The proposed development will meet the requirements of the SMA and the SCSMMP if the conditions already imposed are supplemented and amended by the additional conditions called for in Conclusions of Law II, III and IV above.

VII

We have carefully reviewed the other claims raised by appellants and find them to be without merit.

VIII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The shoreline substantial development permit granted by Snohomish County is remanded for issuance in the same form as previously granted, but with the addition of conditions as described in Conclusions of Law II, III and IV hereof. As so amended, the permit is AFFIRMED.

DATED this 13th day of November, 1987.

SHORELINES HEARINGS BOARD

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LAWRENCE J. FAULK, Presiding

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WICK DUFFORD, Chairman

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